IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7613 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

ISMAIL ALIAS PATTUBHA KASAM BIAD

Versus

DISTRICT MAGISTRATE

Appearance:

1. Special Civil Application No. 7613 of 2002

MR YV WAGHELA for MR ASHISH M DAGLI for Petitioner No. 1

MR VM PANCHOLI, AGP for Respondent No. 1-3

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 28/02/2003

ORAL JUDGEMENT

By filing this petition, the petitioner detenu has challenged his detention order dated 11.7.2002, by which he is detained as a 'bootlegger', under the Prevention of Anti Social Activities Act. Along with the detention order, he is also served with the grounds of detention of the same date.

2. In the grounds of detention, there is a reference

to five cases which are filed against the petitioner under the provisions of the Bombay Prohibition Act. The detaining authority has also considered the statements of three witnesses and after considering the material on record, the detaining authority has passed the aforesaid detention order against the petitioner which has been challenged by the petitioner on various grounds before this Court.

3. Learned Advocate Mr.Waghela for the petitioner has strenuously contended that the detaining authority has not applied his mind while passing the detention order against the petitioner. He has relied upon the averments made in Ground (h) of the petition, which read as under:

> "(h) It is respectfully submitted that there is a clear non-application of mind on the part of the detaining authority. It is further submitted that the detaining authority has considered the offence as pending trial but in fact, the petitioner has already been acquitted in the offence, which is shown pending trial. It is respectfully submitted that the detaining authority has considered one offence being C.R.No. 5021/2000 dated 13.2.2000 and shown pending trial. The petitioner humbly submits that the petitioner has been acquitted from the aforesaid offence on 26.12.2000 and, therefore, the detaining authority had not applied his mind and passed the order of detention on mechanical manner without verifying the record and, therefore also, the impugned order of detention is liable to be quashed and set aside."

It is, therefore, submitted that the sponsoring authority has not sent the relevant material, by which the petitioner is already acquitted in the criminal case and instead, the said case is shown to be pending at the time when the order of detention is passed. Learned AGP Mr.Pancholi submitted that even though no reply has been filed, he has received comments from the concerned Department and on the basis of the said comments, he has submitted that by oversight, the sponsoring authority has shown the case as pending even though the petitioner has already been acquitted in connection with the said case.

4. The undisputed fact is that the sponsoring authority has sent the proposal, showing one case as pending, while the petitioner was already acquitted, and

in view of such material, the subjective satisfaction arrived at by the detaining authority is vitiated, as, the material, which is in favour of the petitioner detenu, has not been sent, and therefore, the same was not considered by the authority while passing the order of detention. Not only that, even the case, in which the petitioner has been acquitted, is shown to be pending and there is gross non-application of mind on the part of the detaining authority. Under the circumstances, the impugned order of detention is required to be quashed and set aside.

5. In the result, the petition is allowed. The order of detention dated 11.7.2002 passed against the detenu is quashed and set aside. The detenu is ordered to be released forthwith unless he is required in connection with any other case. Rule is made absolute.

Sreeram. (P.B.Majmudar, J.)